

1  
2  
3  
4  
5  
6  
7  
8 **UNITED STATES DISTRICT COURT**  
9 **SOUTHERN DISTRICT OF CALIFORNIA**  
10

11 MEDIFAST, INC.; BRADLEY  
12 MACDONALD,

Plaintiffs,

13 vs.  
14

15 BARRY MINKOW; FRAUD DISCOVERY  
16 INSTITUTE, INC.; ROBERT L.  
17 FITZPATRICK; TRACY COENEN;  
18 SEQUENCE, INC.; WILLIAM LOBDELL;  
19 IBUSINESS REPORTING;  
20 ZEEYOURSELF,

Defendants.  
21

CASE NO. 10-CV-382 JLS (BGS)

**ORDER: DENYING PLAINTIFFS'  
MOTION FOR ENTRY OF  
JUDGMENT UNDER FED. R. CIV.  
P. 54(b)**

(Doc. No. 134)

22 On March 29, 2011, the Court granted in part and denied in part Defendants' anti-SLAPP  
23 motions to strike Plaintiffs' complaint. (Doc. No. 130.) Presently before the Court is Plaintiffs  
24 Medifast, Inc. and Bradley MacDonald's motion for entry of judgment under Federal Rule of Civil  
25 Procedure 54(b).<sup>1</sup> The explicit purpose of Plaintiffs' motion is to clarify "when Plaintiffs' time for

---

26 <sup>1</sup> Federal Rule of Civil Procedure 54(b) provides:

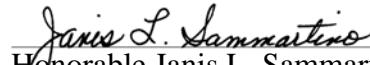
27 When an action presents more than one claim for relief—whether as a claim,  
28 counterclaim, crossclaim, or third-party claim—or when multiple parties are involved,  
the court may direct entry of a final judgment as to one or more, but fewer than all,  
claims or parties only if the court expressly determines that there is no just reason for  
delay. Otherwise, any order or other decision, however designated, that adjudicates  
fewer than all the claims or the rights and liabilities of fewer than all the parties does

1 filing a notice of appeal [from the Court's order on Defendants' anti-SLAPP motions] begins . . . to  
2 run."<sup>2</sup> (Doc. No. 134-1, at 2; *see also id.* at 3 ("[I]t is unclear whether the time for filing a notice of  
3 appeal has begun to run on portions of the case, or if not, when it will begin to run.")).

4 The Court need not enter judgment to start the running of Plaintiffs' time for filing a notice  
5 of appeal. *See, e.g., Zamani v. Carnes*, 491 F.3d 990, 994 (9th Cir. 2007) ("[T]he denial of an anti-  
6 SLAPP motion is immediately appealable pursuant to the collateral order doctrine."); *Batzel v. Smith*,  
7 333 F.3d 1018, 1025 (9th Cir. 2003) ("A district court's denial of a claim of immunity, to the extent  
8 that it turns on an issue of law, is an appealable final decision within the meaning of 28 U.S.C. § 1291  
9 notwithstanding the absence of a final judgment."). Accordingly, Plaintiffs' motion for entry of  
10 judgment is **DENIED WITHOUT PREJUDICE**.

11 **IT IS SO ORDERED.**

12  
13 DATED: April 25, 2011

14   
15 Honorable Janis L. Sammartino  
16 United States District Judge  
17  
18  
19  
20  
21  
22  
23  
24

25 \_\_\_\_\_  
26 not end the action as to any of the claims or parties and may be revised at any time  
27 before the entry of a judgment adjudicating all the claims and all the parties' rights and  
28 liabilities.

<sup>2</sup> Defendants Coenen and Sequence, Inc., and FitzPatrick have filed separate motions for  
judgment under 54(b), for separate purposes. (Doc. Nos. 131, 133.) The Court will address those  
motions by separate Order.